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Trial Practice—Motion for New Trial—What May a Succeeding Judge Consider in Ruling on Motion Made before His Predecessor

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TRIAL PRACTICE—MOTION FOR NEW TRIAL—WHAT MAY A SUCCEEDING JUDGE CONSIDER IN RULING ON MOTION MADE BEFORE HIS PREDECESSOR

In an action against the manufacturer for damages caused by a defect in an automobile, the jury returned a verdict for the plaintiff in the amount of $50,000, whereupon the trial judge stated, "Members of the jury, I am astounded. It is my opinion that that is clearly against the weight of the evidence in this case." A motion for a new trial was made by the defendant, but the trial judge died before it could be heard by him. Subsequently, the motion was assigned to another judge of the district court who denied the motion on the ground that he was not free to reweigh the evidence and on condition that the plaintiff remit so much of the verdict as was in excess of $31,060. *Held*: Remanded to the district court with instructions to reconsider the motion for a new trial by weighing the evidence and all other relevant factors. The court stated that one relevant factor was the expressed views of the trial judge at the time the verdict was rendered.[1]

[1] Magee v. General Motors, 213 F.2d 899 (3d Cir. 1954).

Despite the provision made in Rule 63 of the Federal Rules of Civil Procedure,[2] which grants power to a succeeding judge to rule on motions left undecided by his predecessor, there remains the question of what can be considered by the successor in his determination of the motions.

Under the common law practice, leaving a motion for a new trial undecided was a proper grounds for a new trial where the trial judge was incapacitated, or for other reasons did not complete the trial. The reasoning behind such a practice was that there was no record of the trial proceedings on which the successor could base a decision.[3] With the enactment of statutes providing for stenographic reports of the trial proceedings and as improvements in the methods of taking the record of trials were developed, it became the practice to allow the succeeding judge power to decide motions left undecided by the previous judge.[4]

The most serious objection raised in allowing the successor to rule on motions for new trials has been that he was not physically present at the trial, and therefore could not give proper weight to the appearance of witnesses and their manner of testifying—both of which would have an effect on the weight given to their testimony.[5] This argument has been especially urged when the grounds for the new trial were that the verdict of the jury was against the weight of evidence.[6] However, even in this situation it is held that the successor can make a fair and just ruling as to the desirability for a new trial by an examination of the record of evidence.[7]

[2] Fed. R. Civ. P. 63.

[3] Penn Mut. Life Ins. Co.v. Ashe, 145 Fed. 593 (6th Cir. 1906); Bass v. Swingley, 42 Kan. 729, 22 Pac. 714 (1889).

[4] Brent v. Chas. H. Lilly Co., 202 Fed. 335 (W.D. Wash. 1913); Meldrum v. United States, 151 Fed. 177 (9th Cir. 1907); Commonwealth v. Gedzium, 261 Mass. 299, 159 N.E. 51 (1927); Great Northern Ry. v. Becher-Barrett-Lockerby Co., 200 Minn. 258, 274 N.W. 522 (1937); Southhall v. Evans, 114 Va. 461, 76 S.E. 929 (1913).

[5] People ex rel Hambel v. McConnell, 155 Ill. 192, 40 N.E. 608 (1895).

[6] Bass v. Swingley, 42 Kan. 729, 22 Pac. 714 (1889); Heiland v. Hildebrand, 81 Ohio App. 25, 70 N.E.2d 678 (1946); Lance v. Slusher, 74 Ohio App. 361, 59 N.E.2d 57 (1944); Bernard v. McRay, 89 Okla. 1, 213 Pac. 82 (1923); Carkonen v. Columbia & P.S. Ry., 102 Wash. 11, 172 Pac. 816 (1918).

[7] Heiland v. Hildebrand, 81 Ohio App. 25, 70 N.E.2d 678 (1946); Lance v. Slusher, 74 Ohio App. 361, 59 N.E.2d 57 (1944); Bernard v. McRay, 89 Okla. 1, 213 Pac. 82 (1923); Carkonen v. Columbia & P.S. Ry., 102 Wash. 11, 172 Pac. 816 (1918).

Statutes giving the succeeding judge power to decide motions made in the trial before his predecessor have been silent on what the succeeding judge should consider in making his decision. Dicta in the cases usually indicates that the succeeding judge should consider the evidence of the trial as found in the transcript of the proceedings.[8] There has been little occasion for a court to decide whether the former trial judge's statements of opinion may be taken into consideration.[9]

When a court requires the succeeding judge to consider statements of opinion, it is departing from the very basis on which the successor's power was allowed, i.e., that the evidence on which the jury verdict was based can be found in the record of trial, thus enabling the succeeding judge to make a fair ruling as to a motion for a new trial. Such a practice can lead to unjust results and cause hardship to the participants in the litigation. For example, suppose that upon the rendition of the verdict by the jury, the trial judge exclaims, without thought on his part, that in his opinion the verdict is against the weight of evidence. It may be that the evidence actually supports the verdict, and upon further contemplation the trial judge would have realized that his prior statement was erroneous. He dies before he can rule on the motion for a new trial. The successor, relying on this opinion rather than the evidence in the record, might grant a new trial. This would cause the appellee to relitigate his claim for no valid reason.

Conversely, the trial judge, in the previous example, might exclaim that the jury's decision was correct when in fact the record shows this conclusion to be erroneous. The successor, giving undue weight to that statement of opinion, refuses the motion for new trial. As a result such a conclusion deprives a deserving person a new trial.

Further, in the instant case it is within the realm of possibility that the previous judge's remark, "It is my opinion that *that* is clearly against the weight of evidence," was concerned

[8] Lance v. Slusher, 74 Ohio App. 361, 59 N.E.2d 57 (1944); Great Northern Ry. v. Becher-Barrett-Lockerby Co., 200 Minn. 258, 274 N.W. 522 (1937); Bernard v. McRay, 89 Okla. 1, 213 Pac. 82 (1923); People v. McConnell, 155 Ill. 192, 40 N.E. 608 (1895).

[9] Carkonen v. Columbia & P.S. Ry., 102 Wash. 11, 172 Pac. 816 (1918) ("This, we think, shows that the judge while taking into consideration what he conceived to be the views of his predecessor in office, determined the matter from the entire record, and exercised his own judgment and discretion in so doing.").

only with the question of excessive damages as shown by the evidence, not with the jury's finding of defendant's liability. It would be mere guesswork to say to what part of the jury's verdict he intended to refer. In the case in question, the damages were actually reduced by the successor. This strengthens the proposition that the basis of the predecessor's opinion was that the damages were excessive as shown by the evidence.

In Nebraska[10] another problem is presented as to what a successor may consider in ruling on a motion for a new trial. A ruling on a motion for a new trial is appealable to the supreme court. Contrary to federal practice, the Nebraska Supreme Court decides the motion on its merits without remanding it to the trial court for reconsideration. As in federal practice, the supreme court should restrict itself to a consideration of the evidence in the record and ignore the trial court's statement of opinion.

In conclusion, the succeeding judge should restrict his consideration to evidence in the record when ruling on a motion for a new trial. He should disregard a predecessor's statements of opinions for the following reasons: (1) The statements are not evidence received in the trial court; (2) There is a possibility of misinterpreting the reason for his remarks; (3) There is the uncertainty of whether the judge would have changed his mind after reflecting on the evidence.

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[10] Krepcik v. Interstate Transit Lines, 153 Neb. 98, 43 N.W.2d 609 (1950).